

1 administrative remedies as to any claim that arises in the prison setting, regardless of any
2 limitations on the kind of relief that may be gained through the grievance process. *See Porter v.*
3 *Nussle*, 534 U.S. 516, 532 (2002); *Booth v. Churner*, 532 U.S. 731, 741 n.6 (2001). Exhaustion
4 means “a prisoner must complete the administrative review process in accordance with the
5 applicable procedural rules, including deadlines, as a precondition to bringing suit in federal
6 court.” *Woodford v. Ngo*, 548 U.S. 81, 92 (2006). An inmate’s failure to exhaust will only be
7 excused “under certain limited circumstances,” and an inmate can defeat a claim of failure to
8 exhaust only by showing “he was misled or that there was some extraordinary reason he was
9 prevented from complying with the statutory mandate.” *Harris v. Armstrong*, 149 F. App’x 58,
10 59 (3d Cir. 2005); *Davis v. Warman*, 49 F. App’x 365, 368 (3d Cir. 2002).

12 Plaintiff does not dispute Defendant’s evidence that he has failed to exhaust administrative
13 remedies. *See* Doc. No. 45-1 at ¶ 6. Instead, he argues that the Supreme Court’s decision in *Jones*
14 *v. Bock*, 549 U.S. 199 (2007), overruled the PLRA and eliminated the exhaustion requirement.
15 (Doc. No. 78.) Plaintiff is mistaken. *Jones* plainly states, “There is no question that exhaustion is
16 mandatory under the PLRA and that unexhausted claims cannot be brought in court.” *Id.* at 211.
17 In *Jones*, the Court held that exhaustion is an affirmative defense under the PLRA, and thus
18 plaintiffs are not required to specially plead or demonstrate exhaustion in their complaints. 549
19 U.S. at 212. Defendants, however, do not seek dismissal on the grounds that Plaintiff failed to
20 *plead* exhaustion; rather, they complied with *Jones* and raised exhaustion as an affirmative
21 defense. Plaintiff’s misreading of this precedent does not qualify as an “extraordinary reason”
22 excusing compliance with the exhaustion requirement.
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1 Accordingly, it is hereby ordered that:

2 (1) The Report and Recommendation is adopted;

3 (2) Defendants' Motion to Dismiss, which has been converted into a Motion for
4 Summary Judgment on the exhaustion issue, is GRANTED;

5 (3) Plaintiff's Motion for Preliminary Injunction is DENIED AS MOOT;

6 (3) The case is CLOSED; and

7 (4) The Clerk of the Court shall send copies of this Order to the parties.
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9 **IT IS SO ORDERED.**

10 Dated this 28th day of February, 2017.

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14 Barbara Jacobs Rothstein
15 U.S. District Court Judge
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